

Message Text

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E.O. 11652: N/A

TAGS: CODES, CH, US

SUBJECT: RIGHT OF INHERITANCE IN PRC

REF: (A) STATE 130883 (1974) AND SUBSEQUENT

(B) PEKING 337

SUMMARY: AT FEBRUARY 28 MEETING WITH CONSULAR DEPARTMENT, CHINESE ASKED NUMBER OF "CLARIFICATIONS" TO USLO'S QUESTIONS OF PRC REGULATIONS ON RIGHTS OF INHERITANCE. THEY DID NOT REPLY TO QUESTIONS AND SAID THE MATTER WOULD BE REFERRED TO THE RESPONSIBLE AUTHORITIES AND WOULD LET USLO KNOW WHEN THE ANSWERS WERE AVAILABLE. END SUMMARY.

1. BEGIN UNCLASSIFIED. FOLLOWING IS A MEMORANDUM OF CONVERSATION OF THE DISCUSSIONS USLO OFFICERS HELD ON FEBRUARY 28 WITH THE CONSULAR DEPARTMENT CONCERNING PRC REGULATIONS ON RIGHTS OF INHERITANCE. WE BELIEVE IT WILL PROVIDE THE DEPARTMENT WITH A GOOD IDEA OF A TYPICAL CONSULAR EXCHANGE.

2. FOLLOWING THE USUAL PRELIMINARY TEA, CIGARETTES, AND DISCUSSIONS ABOUT THE WEATHER, USLO OPENED DISCUSSION BY NOTING THAT THE LIAISON OFFICE RECENTLY ASKED THE CONSULAR DEPARTMENT QUESTIONS ON REGULATIONS CONCERNING INHERITANCE. USLO NOTED THAT THE CONSULAR DEPARTMENT HAD REQUESTED FURTHER INFORMATION TO PERMIT IT TO ANSWER THESE QUESTIONS AND THAT THIS HAD BEEN PROVIDED. IN RESPONSE TO THE CONSULAR DEPARTMENT'S SUGGESTIONS THAT WE MEET TO DISCUSS THE

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QUESTION, USLO WAS PLEASED TO MEET WITH CHANG JUI, DIVISION HEAD,

TODAY AND WAS PREPARED TO PROVIDE ANY CLARIFICATION WHICH MIGHT BE NECESSARY TO PERMIT THESE QUESTIONS TO BE ANSWERED.

3. USLO THEN EXPLAINED THE REASON FOR THE QUESTIONS, NOTHING THAT MANY STATES IN THE US HAVE LAWS WHICH PROHIBIT THE TRANSFER OF THE FUNDS OF AN ESTATE TO NON-RESIDENT ALIEN HEIRS UNLESS THE HEIRS CAN SHOW THAT RECIPROCITY IN INHERITANCE EXISTS IN THE FOREIGN COUNTRY CONCERNED. OUR LACK OF KNOWLEDGE, USLO CONTINUED, OF WHETHER OR NOT THE PRC WOULD PERMIT A US CITIZEN RESIDENT IN THE US TO INHERIT PROPERTY FROM A RESIDENT OF THE PRC IS MAKING IT IMPOSSIBLE FOR THE ESTATES OF CERTAIN DECEASED PERSONS IN CALIFORNIA AND IN OTHER STATES TO BE SETTLED AND MAKES ESTATE PLANNING BY THE CHINESE AMERICANS WITH RELATIVES LIVING IN THE PRC DIFFICULT.

4. CHANG JUI RESPONDED, STATING THAT FIRST HE WISHED TO KNOW WHETHER USLO HAD ANY SPECIFIC CASES IN MIND. USLO SAID IT HAD NO INFORMATION ON SPECIFIC CASES OTHER THAN THE INFORMATION THAT THE ESTATES OF CERTAIN PERSONS COULD NOT BE SETTLED BECAUSE OF THE LACK OF KNOWLEDGE OF CHINESE LAWS.

5. CHANG JUI ASKED IF WE MEANT IN CALIFORNIA. USLO SAID THAT WE UNDERSTOOD THERE WERE ESTATES WHICH COULD NOT BE SETTLED IN CALIFORNIA, AND CHANG JUI ASKED AGAIN IF WE HAD ANY PARTICULAR CASES IN MIND. USLO REPEATED THAT IT HAD NO SUCH INFORMATION.

6. CHANG JUI THEN ASKED WHAT WE MEANT WHEN WE SAID A "RESIDENT OF THE US." HE ASKED IF WE WERE REFERRING TO A RESIDENT OF CHINESE NATIONALITY

OR ONE WITH US CITIZENSHIP. USLO REPLIED THAT IT COULD BE EITHER.

7. CHANG JUI ASKED WHETHER WE MEANT A RELATIVE, A COLLATERAL RELATIVE OR A NON-RELATIVE OF THE DECEASED AS THE PERSON WHO COULD INHERIT THE PROPERTY. USLO REPLIED THAT THE INDIVIDUAL STATES HAD THEIR RESPECTIVE LAWS AND THAT THERE WAS NO SINGLE FEDERAL LAW IN THIS AREA, TO WHICH CHANG JUI INTERJECTED, "YOU DON'T HAVE A FEDERAL LAW?" WE CONFIRMED THAT THERE WAS NONE TO OUR KNOWLEDGE.

8. USLO SAID THAT THE INDIVIDUAL COULD MAKE A WILL WHICH DIRECTED THE MANNER IN WHICH HE WOULD LIKE HIS ESTATE TO BE DIVIDED. THE INDIVIDUAL COULD LEAVE HIS ESTATE TO A RELATIVE OF RPT OF LIMITED OFFICIAL USE

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WHATEVER CLASSIFICATION OR A NON-RELATIVE.

9. CHANG JUI ASKED IF THIS WAS "ACCORDING TO GENERAL PRACTICE IN THE US." USLO REPLIED THAT IT WAS UP TO THE INDIVIDUAL MAKING HIS WILL.

10. CHANG JUI THEN ASKED WHAT HAPPENS IF NO WILL WERE LEFT BY THE

DECEASED. USLO REPLIED THAT THE INDIVIDUAL STATE LAWS VARY BUT THAT WE UNDERSTOOD IT TO BE A GENERAL PRINCIPLE THAT IF THERE WERE NO WILL, THE PROPERTY WOULD PASS TO THE CLOSEST NEXT OF KIN. USLO UNDERSTOOD THAT NORMALLY THIS WOULD BE THE WIFE OR HUSBAND OF THE DECEASED, AND IF THERE WERE NO WIFE OR HUSBAND IT WOULD NORMALLY DESCEND TO THE CHILDREN. WE REPEATED THAT THESE WERE QUITE GENERAL PRINCIPLES AND THAT EACH STATE WOULD HAVE SPECIFIC LAWS IN THIS REGARD.

11. CHANG JUI THEN REFERRED TO OUR QUESTION WHETHER OR NOT AN "ALIEN NON-DIPLOMATIC RESIDENT OF THE PRC COULD LEAVE HIS PROPERTY TO A PERSON RESIDENT IN THE US." HE ASKED WHETHER WE WERE REFERRING TO A PERSON RESIDENT IN THE US OF CHINESE NATIONALITY OR US NATIONALITY. USLO REPLIED EITHER. CHANG JUI ASKED IF THIS INCLUDED A PERSON WITH THE NATIONALITY OF A THIRD COUNTRY. USLO REPLIED YES.

12. CHANG JUI THEN NOTED THAT "TO INHERIT" HAD TWO CONNOTATIONS. FIRST, HE SAID, TO INHERIT PROPERTY COULD MEAN THAT IT COULD BE TRANSFERRED TO AN INDIVIDUAL. IT COULD ALSO MEAN THAT THE PROPERTY OR FUNDS COULD BE REMITTED OUT OF CHINA.

13. USLO REPLIED THAT IF THE PERSON IN CHINA HAD THE RIGHT TO SPECIFY THAT A RESIDENT OF THE US WOULD INHERIT HIS PROPERTY, THEN IT WOULD LIKE TO KNOW WOULD THE BENEFICIARY IN THE US BE ABLE TO TRANSFER FUNDS TO THE US OR WOULD THE BENEFICIARY BE INSTRUCTED TO THE USE OF FUNDS AND/OR PROPERTY IN CHINA.

14. CHANG JUI NOTED THAT USLO HAD SAID THAT DIFFERENT STATES HAVE LAWS WHICH PROHIBIT THE TRANSFER OF FUNDS OF A DECEASED TO A NON-RESIDENT HEIR AND ASKED AGAIN IF THIS WAS COMMON AND IF IT APPLIED TO ALL STATES.

15. USLO REPLIED THAT IT KNEW THAT IT APPLIED TO MANY STATES AND LIMITED OFFICIAL USE

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THAT THIS INCLUDED CALIFORNIA WHERE, OF COURSE, THERE IS A RELATIVELY LARGE NUMBER OF PERSONS OF CHINESE ORIGIN WHO STILL HAVE RELATIVES IN THE PRC.

16. CHANG JUI THEN ASKED IF HE COULD GIVE AN EXAMPLE WHICH MIGHT CLARIFY THE QUESTION: "FOR INSTANCE," HE SAID, "IF THERE IS AN AMERICAN CITIZEN OF CHINESE ORIGIN IN THE US, CAN HIS RELATIVE IN CHINA INHERIT HIS PROPERTY IN THE US?" USLO SAID THAT WAS A QUESTION WE WERE DISCUSSING. APPARENTLY, ACCORDING TO CALIFORNIA LAW, USLO SAID, THE HEIR IN CHINA WOULD HAVE TO SHOW THAT RECIPROCITY IN INHERITANCE EXISTS IN CHINA.

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ACTION SCS-03

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R 070300Z MAR 75

FM USLO PEKING

TO SECSTATE WASHDC 3330

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17. CHANG JUI ASKED WHAT WOULD HAPPEN IF THERE WERE RECIPROCITY. USLO REPLIED THAT IF THE HEIR COULD SHOW THAT PRC OFFERED RECIPROCITY, IT APPEARED THAT A NON-RESIDENT HEIR WOULD BE PERMITTED TO INHERIT THE ESTATE.

18. CHANG JUI ASKED IF THIS LAW, FOR EXAMPLE, THE LAW IN CALIFORNIA APPLIED TO OTHER COUNTRIES AS WELL. USLO REPLIED THAT TO OUR KNOWLEDGE IT WOULD APPLY TO ALL FOREIGN COUNTRIES.

19. HE ASKED IF THERE WAS AN AGREEMENT OR UNDERSTANDING IN THIS REGARD BETWEEN THE US AND OTHER FOREIGN COUNTRIES. USLO SAID THAT THERE WOULD NOT BE AN AGREEMENT AT THE FEDERAL GOVERNMENT LEVEL. OUR UNDERSTANDING WAS THAT THE COURT, FOR EXAMPLE, IN THE STATE OF CALIFORNIA HAD TO BE SATISFIED THAT THIS RECIPROCAL RIGHT OF INHERITANCE EXISTED UNDER THE LAWS OF A FOREIGN COUNTRY. USLO EXPLAINED THAT MANY MATTERS ARE THE CONCERN OF STATES, NOT OF THE FEDERAL GOVERNMENT, AND THAT THIS WAS ONE OF THEM.

20. CHANG JUI ASKED WHAT USLO MEANT WHEN IT SAID THAT THE COURT HAD TO BE SATISFIED THAT RECIPROCAL RIGHTS OF INHERITANCE EXISTED? HE ASKED WOULD WE MEAN THAT IF THE COURT CLEARLY UNDERSTANDS OR IS AWARE OF THE LAWS OF INHERITANCE OF A FOREIGN COUNTRY AND BELIEVES THAT THE PRINCIPLE OF RECIPROCITY IS MET OR FULFILLED THEN IT WOULD NO LONGER REQUIRE A PERSON TO SUBMIT A CERTIFICATE STATING THAT THE LAW OF RECIPROCITY EXISTS?

21. USLO SAID THAT IT HESITATED TO TRY TO DEFINE WHAT WOULD SATISFY A PARTICULAR COURT, BUT THAT IT APPEARED WHAT CHANG JUI HAD SAID WAS LIMITED OFFICIAL USE

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CORRECT, I.E. THAT AN HEIR COULD PRESENT, FOR EXAMPLE, A TRANSLATION OF EXISTING LAWS OF THE COURT OR CITE CASES WHICH WOULD SHOW THAT IT IS CLEAR THAT THE FOREIGN COUNTRY PERMITS RECIPROCITY.

22. CHANG JUI THEN SAID THAT HE UNDERSTOOD THAT A CERTIFICATE IS REQUIRED ON THE PART OF THE HEIR FOR INHERITANCE PURPOSES.

23. WHEN USLO SAID IT DID NOT UNDERSTAND THE QUESTION, HE GAVE AS AN EXAMPLE A FRENCHMAN WHO IS GOING TO INHERIT PROPERTY IN THE US. THIS FRENCHMAN, HE SAID, HAD TO PROVIDE A "DOCUMENT, A CERTIFICATE."

USLO SAID THAT IT DID NOT BELIEVE THAT WE WERE TALKING ABOUT A SPECIFIC DOCUMENT WHICH HAD TO BE PROVIDED TO A COURT.

24. CHANG JUI NOTED THAT USLO HAD SAID THAT THE REASON WE HAD POSED THE QUESTIONS WAS BECAUSE THE STATES IN THE US HAVE LAWS WHICH PROHIBIT A TRANSFER OF FUNDS TO NON RESIDENT ALIEN HEIRS UNLESS THE HEIRS CAN SHOW THAT RECIPROCITY EXISTS IN THE FOREIGN COUNTRY CONCERNED.

HOW CAN AN HEIR SHOW THIS, CHANG JUI ASKED?

25. USLO REPEATED AGAIN THAT IT WOULD HESITATE TO TRY TO DEFINE WHAT WOULD BE NECESSARY TO SATISFY A COURT. USING THE FRENCH EXAMPLE, USLO SAID THAT THE HEIR MIGHT BE ABLE TO CITE A FRENCH LAW, IF THERE WERE ONE, WHICH WOULD PERMIT INHERITANCE ABROAD. IF THERE

WERE NO WRITTEN LAWS, THEN IT WOULD BE NECESSARY FOR THE HEIR TO SATISFY THE COURT IN SOME OTHER WAY. HE MIGHT, WE SUGGESTED, CITE PRECEDENTS WHICH DEMONSTRATED THAT A PERSON IN THE US WAS PERMITTED TO

INHERIT FROM THIS FOREIGN COUNTRY.

26. CHANG JUI CLOSED THE DISCUSSION BY NOTHING THAT THESE QUESTIONS WERE COMPLICATED. HE ADDED, HOWEVER, THAT AFTER THE DISCUSSIONS, HE WAS NOW RPT NOW CLEAR ON THE QUESTIONS OF THE RIGHT OF INHERITANCE.

THE QUESTION WOULD BE REFERRED TO THE AUTHORITIES CONCERNED AND WOULD LET USLO KNOW WHEN THEY HAD THE ANSWERS. END UNCLASSIFIED.

27. COMMENT: BEGIN LIMITED OFFICIAL USE. FRANKLY, WE DO NOT LIMITED OFFICIAL USE

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SEE HOW THE DISCUSSION CLARIFIED THE QUESTIONS AT ALL SINCE THE ANSWERS

TO THE QUESTION OF THE NATIONALITY OF THE RESIDENT HAD BEEN SUPPLIED TO THE CONSULAR DEPARTMENT IN NOVEMBER. THE REMAINDER OF CHANG

JU'S QUESTIONS DID NOT SEEM PARTICULARLY PERTINENT.

28. WE BELIEVE THAT THE CHINESE WANTED TO BE ASSURED THAT THESE STATE LAWS APPLIED TO ALL FOREIGN COUNTRIES AND NOT JUST TO CHINA. THE CHINESE INTEREST IN SPECIFIC CASES LEADS US TO BELIEVE THAT, AS WE SUSPECT TO BE TRUE IN OTHER AREAS, THERE MAY BE NO PUBLISHED LAWS OR REGULATIONS IN THE PRC.

29. THE DEPARTMENT WILL NOTE WE DID NOT INTRODUCE THE "FULL USE, BENEFIT AND CONTROL OF FUNDS" CONCEPT. WE DID NOT HAVE ENOUGH BACKGROUND AND WE DID NOT WANT TO INTERJECT A NEW FACTOR. IT UNDERSTANDABLY WOULD HAVE RAISED QUESTIONS TO WHICH WE COULD NOT REPLY AND WOULD HAVE CONFUSED THE ISSUE.

30. WE WOULD APPRECIATE THE DEPARTMENT REVIEWING OUR REPLIES TO SEE IF FURTHER CLARIFICATIONS MIGHT ASSIST THE CHINESE TO REPLY TO THE QUESTIONS. WE WOULD ALSO APPRECIATE IF THE DEPARTMENT WOULD CONSIDER WHETHER PROVIDING A LIST OF THOSE STATES WHICH HAVE SUCH LAWS WOULD ASSIST THE CHINESE AND WHETHER IT WOULD BE USEFUL TO PROVIDE THEM WITH THE DETAILS OF ONE OF THE PARTICULAR ESTATES WHICH CANNOT BE SETTLED. END LIMITED OFFICIAL USE.

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